REMARKS

The final Office Action mailed June 3, 2005 and the references cited therein have been carefully considered. Claim 1 has been amended to incorporate the subject matter recited in Claims 13, 14, and 18, which have been cancelled, and Claims 15-17, 19-21, and 24 have been amended to depend from Claim 1 to gain allowance of the application. The application as now presented is believed to be in allowable condition.

Claims 1, 2, and 4-8 were rejected as being obvious in view of U.S. Patent No, 5,417,222 to Dempsey et al. (*Dempsey*) and U.S. Patent No. 6,308,099 to Fox et al. (*Fox*). Claims 1, 2, 4, 5, 7-17, and 20-25 were rejected as being obvious in view of U.S. Patent No. 5,113,869 to Nappholz et al. (Nappholz) and Fox.

It is respectfully submitted that *Fox*, like *Nappholz*, is solely directed to implantable monitors. The Examiner apparently draws a distinction between the terms "wearable" and "externally wearable", in stating that the heart rate monitor of *Nappholz* is "indeed wearable internally". We strongly disagree with this position since a widely recognized definition of the term "wear" is to "carry or have on the body or about the person as a covering, equipment, ornament, or the like: *to wear a coat*; *to wear a saber*; *to wear a disguise*". *Webster's New Universal Unabridged Dictionary*, pp. 2153 (1996). Thus, ordinary usage would not include that either the implanted electrocardiogram device referred to in *Nappholz* or the pacemaker referred to in *Fox* could be worn. Nor would on likely say "I think I'll wear the blue pacemaker today".

In addition, the Examiner relied heavily on the distinction between the terms "wearable" and "implantable" to support a restriction requirement in the Office Action mailed September 29, 2004 by stating in paragraphs 2-5 thereof that implanted heart monitors are "materially different" from wearable heart monitors. Thus, it is respectfully submitted that the Examiner cannot both rely on the alleged patentably material difference between embodiments, i.e. wearable versus implantable heart monitors, to narrow the scope of the

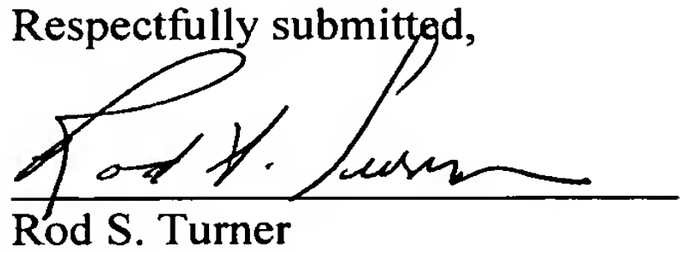
invention for purposes of restricting the search and examination of an embodiment, while using prior art which is solely directed to the embodiment that was restricted as a separate invention, i.e. implantable heart monitors, to render the claimed subject matter obvious.

Claims 18 and 19 were indicated as reciting allowable subject matter and objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including limitations of the base claim and any intervening claims. The allowance of Claims 18 and 19 is acknowledged. Since the allowable subject matter of Claim 18 and intervening claims have been incorporated in Claim 1, it is submitted that Claim 1 is now in condition for allowance.

Applicants respectfully submit that Claims 1-12, 15-17, and 19-25, which ultimately depend from Claim 1, are patentable over the art of record by virtue of their dependency from Claim 1. Further, Applicants submit that Claims 1-12, 15-17, and 19-25 define additional patentable subject matter in their own right. Therefore, it is respectfully requested that the rejection of Claims 1-17 and 20-25 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

In view of the foregoing Amendment and remarks, entry of the amendments to Claims 1, 15-17, 19-21, and 24; favorable consideration of Claims 1, 15-17, 19-21, and 24, as amended, favorable reconsideration of Claims 2-12, 22, 23, and 25; and allowance of pending Claims 1-12, 15-17, and 19-25 are respectfully and earnestly solicited.

Respectfully submitted,



Rod S. Turner
Registration No.: 38,639
Attorney for Applicants

HOFFMANN & BARON, LLP
6900 Jericho Turnpike
Syosset, New York 11791
(516) 822-3550
RST:jp
209856_1